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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1600 of 1999

in

SPECIAL CIVIL APPLICATION No 3245 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BD NIKAM

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR RR VAKIL for Appellant
MR HS MUNSHAW for Respondent No. 1
MR SP HASURKAR for Respondent no.2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

Date of decision: 01/08/2000

C.A.V.JUDGMENT : (Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated July 29, 1999, rendered by the learned Signle Judge, in Special Civil Application No. 3245/98, by which two orders i.e. order dated August 20, 1997 discharging the appellant from service and order dated March 27, 1998 stating that the appellant has become age-barred and is not entitled to the benefit of Rule 7(3) of the Gujarat Panchayats Service (Classification and Recruitment) Rules, 1967, are upheld.

2. The petitioner has passed B.A.M.S. Examination. In the year 1982, District Panchayat, Surat had invited applications for the appointment to the post of Medical Officer, Class-III. Pursuant to the said advertisement, the appellant had applied for the said post. After interview, he was selected and was appointed as Medical Officer on temporary basis by an order dated March 8, 1982. At the time of entry in service, the appellant had produced School Leaving Certificate which indicated that his date of birth is June 1, 1944. However, the competent authority was not satisfied about the correctness of the date of birth and had called upon the appellant to produce necessary evidence regarding his date of birth. The appellant had accordingly produced affidavit sworn by his father in which it was mentioned that the date of birth of the appellant was June 1, 1948. The affidavit sworn by the father of the appellant was accepted by the competent authority and in service records the date of birth of the appellant was recorded to be June 1, 1948. We may state that one of the conditions which was stipulated in the appointment order of the appellant was that he was required to go through regular selection process. On November 23, 1984, respondent no.2 i.e. Gujarat Panchayat Service Selection Board had issued an advertisement and invited applications for the post of Medical Officer, Class-III. In response to the said advertisement, the appellant had applied for the said post through District Development Officer, District Panchayat, Surat. The District Development Officer, after verifying the necessary documents produced by the appellant, had forwarded the

application of the appellant to Gujarat Panchayat Service Selection Board. Though interviews were held on March 4, 1985, the appellant was not called for interview and according to the appellant, on inquiry he learnt that he was not called for interview because respondent no.2 was of the view that the appellant is over-aged. Therefore, the appellant approached High Court by way of filing Special Civil Application No.2309/85. The record of that petition shows that initially the petition was admitted and interim relief against termination of service of the appellant was also granted. However, the said petition was dismissed for default and interim relief was vacated by an order dated July 18, 1997. As the interim relief was vacated, the appellant was discharged from service by an order dated August 20, 1997.

3. The appellant had filed Misc. Civil Application No.1699/97 in Special Civil Application No.2309/85 for restoration of the petition. The petition was restored and thereafter it was placed for final hearing before the Court. The appellant had also filed Special Civil Application No. 6533/97 before the High Court challenging the order by which he was discharged from service. Both the petitions were heard together and the learned Single Judge of this Court by judgment dated July 13, 1998 directed the Gujarat Panchayat Service Selection Board to consider what is the correct date of birth of the appellant and whether he is eligible for selection on the basis of his correct date of birth read with Rule 7(3) of the Gujarat Panchayats Service (Classification and Recruitment) Rules, 1967 ("the Rules" for short). The Rule was accordingly made absolute in Special Civil Application No.2309/85 and Special Civil Application No.6533/97 which was directed against order of discharge from service was dismissed. In view of directions of the High Court in Special Civil Application No.2309/85, case of the appellant regarding his date of birth was considered by the Gujarat Panchayats Service Selection Board. The Board by an order dated March 27, 1998 held that as per Circular dated February 18, 1974 issued by the General Administration Department of State Government, only School Leaving Certificate and extract from Birth and Death Registration can be looked into as evidence regarding date of birth and as the appellant was over-aged at the time of initial appointment, he was not entitled to benefit of Rule 7(3) of the Rules. The appellant, therefore, instituted Special Civil Application No.3245/98 and prayed the Court to set aside order dated August 20, 1997 by which he was discharged from service as well as order dated March 27, 1998 passed by the Gujarat Panchayats Service Selection Board holding

that he was not entitled to the benefit of relaxation in age as contemplated by Rule 7(3) of the Rules. The learned Single Judge has dismissed the petition by the impugned judgment, giving rise to present appeal.

4. Mr. Y.N.Oza, learned Senior Advocate for the appellant submitted that the fact that District Panchayat, Surat had accepted the affidavit of father of the appellant and recorded the date of birth of the appellant to be June 1, 1948 in service records, is not taken into consideration by the Board and, therefore, order dated March 27, 1998 holding that the appellant is age-barred and not entitled to the benefit of provisions of Rule-7(3) of the Rules, deserves to be set aside. On the basis of additional affidavit filed in this appeal it was contended that if the date of birth of the appellant is taken to be June 1, 1944, then one will have to conclude that the appellant had passed Higher Secondary School Certificate Examination at the age of 21 years and B.A.M.S. at the age of 29 years, which is not probable at all and, therefore, the age of the appellant should be accepted as June 1, 1948. What was claimed was that in view of the directions given by the High Court in Special Civil Application No. 2309/85, an opportunity of being heard ought to have been afforded by the Board to the appellant so as to enable him to produce necessary evidence before the Board with regard to his correct date of birth and as the principles of natural justice are violated, the appeal should be accepted.

5. Mr. S.P.Hasurkar, learned counsel for the Board submitted that the appellant was over-aged at the time of initial recruitment by the District Panchayat and, therefore, the appeal being devoid of merits, should be dismissed. It was pleaded that in view of the contents of Circular dated February 18, 1974, only School Leaving Certificate or extract from the Register of Birth and Death can be looked into for the purpose of age of a candidate and as School Leaving Certificate of the appellant indicates that his date of birth was June 1, 1944, order dated March 27, 1998 should be upheld by this Court. Mr. H.S.Munshaw, learned Counsel for the District Development Officer, District Panchayat, Surat has adopted the arguments advanced by the learned counsel for the Board and submitted that the judgment impugned being just and legal, should be upheld by the Court.

6. We have taken into consideration the arguments advanced at the Bar as well as the documents forming part of the record. It is relevant to notice that in Special Civil Application No.6533/97, which was filed by the

appellant against the order of discharge from service, an affidavit-in-reply was filed by District Development Officer, District Panchyat, Surat and in Para-3 of the said reply, following averments were made :-

"It is stated that on the basis of the school leaving certificate, it was noticed that birth date of the petitioner was 1st June, 1944. As per the Recruitment Rules for Class-III Medical Officer, the upper age limit fixed is 35 years. As the petitioner had already crossed the age limit of 35 years on the basis of the birth date mentioned in the school leaving certificate i.e. 1st June, 1944, he was asked to produce necessary documents about his birth. The petitioner produced an affidavit showing that he was born on 1st June, 1948 and accordingly the said birth date was also recorded in the service book of the petitioner."

The above quoted passage from the affidavit-in-reply filed by the District Development Officer would indicate that the affidavit filed by the father of the appellant stating that the age of birth of the appellant was June 1, 1948 was accepted and accordingly, the said date of birth was recorded in the service book of the appellant. This aspect of the matter has not been considered by the Board while deciding the issue relating to the date of birth of the appellant. In view of the judgment of the learned Single Judge rendered in Special Civil Application No.2309/85, the Board should have considered the effect of acceptance of affidavit filed by father of the appellant as well as the fact that in service records, date of birth of the appellant was recorded to be June 1, 1948. A reasonable reading of the judgment rendered in Special Civil Application No.2309/85 makes it clear that an opportunity of hearing ought to have been afforded to the appellant before deciding the issue regarding his date of birth. If the appellant had been afforded an opportunity of being heard, he could have produced documents which are sought to be produced by him in this appeal by way of an additional affidavit. The additional affidavit filed and documents produced therewith are not controverted by the respondents. The averments made in the affidavit to the effect that if the date of birth of the appellant is taken to be June 1, 1994, then one will have to conclude that the appellant had passed Higher Secondary School Certificate Examination at the age of 21 years and B.A.M.S. at the age of 29 years, which is not probable at all, deserve acceptance. At the time of birth of the appellant,

Horoscope was prepared which is produced along with the additional affidavit. It is mentioned therein that the appellant was born in S.Y. 2004, which would be equivalent to 1948. It is true that the Board normally should not ignore the Circular of the Government laying down that only school leaving certificate or extract from the Register of Death and Birth can be relied on for the purpose of ascertainment of date of birth. However, in view of (i) the discussion made and directions issued in the judgment which was rendered in Special Civil Application No.2309/85, (ii) the fact of acceptance of the affidavit filed by the father of the appellant on April 17, 1974 stating that the date of birth of the appellant was June 1, 1948, (iii) service record of the appellant indicating the date of birth of the appellant is June 1, 1948 and (iv) Horoscope of the appellant mentioning that the appellant was born in the year 1948, we are of the opinion that the Gujarat Panchayat Service Selection Board materially erred in holding that the date of birth of the appellant was June 1, 1944 and that he was not entitled to the benefit of Rule 7(3) of the Rules. The decision of the Board, therefore, is liable to be set aside.

For the foregoing reasons, the appeal partly succeeds. The judgment dated July 29, 1999, rendered by the learned Single Judge in Special Civil Application No. 3245/98, in so far as it confirms the order of the Board dated March 27, 1998, is set aside and quashed. Special Civil Application No.3245/98 is partly allowed and order dated March 27, 1998 passed by the Gujarat Panchayat Service Selection Board, is set aside and quashed by holding tht the date of birth of the appellant is June 1, 1948. Rule is made absolute in the petition to the extent indicated hereinabove, with no orders as to costs. The Selection Board is directed to consider the case of the appellant for selection to be made for the post of Medical Officer, Class-III and if he is found fit to place him in the select list and take necessary steps for his appointment on the said post. It is clarified that if the appellant is not found fit to be selected, the question of appointment does not arise. The Board shall complete this exercise as early as possible and preferably within three months from the date of receipt of the writ. The appeal is accordingly allowed, with no order as to costs.

(D.M.Dharmadhikari,CJ)

(J.M.Panchal, J.)
(patel)

